IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

Crl.MC.No. 1582 of 2007()

CC.599/2006 of JUDL.MAGISTRATE OF FIRST CLASS-III, KOTTAYAM

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PETITIONER: ACCUSED

VIJITH VIJAYARAJAN,
AGED 29 YEARS,S/O.P.VIJAYARAJAN,
PRANAVAM HOUSE,
NEAR CHENDAMANGALAM AYYAPPAN TEMPLE,
CHORODE VILLAGE,CHORODE KARA,
VADAKARA TALUK,KOZHIKODE.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1582 of 2007

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Dated this the 8th day of June, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 419 I.P.C. The crux of the allegations against him is that he attempted to win favours by making a false representation to the officials at a hotel and later at the police station that he is an I.P.S. officer of Madras cadre. Closer scrutiny reveals that he is not an I.P.S. officer. He did not succeed in his fraudulent venture. F.I.R. has been registered. Final report has already been filed. The petitioner has not so far appeared before the learned Magistrate.

2. The learned counsel for the petitioner submits that the allegations even if accepted in toto do not reveal the offence punishable under Section 419 I.P.C. Claiming oneself to be another person without any intention to cheat cannot be said to be an offence punishable under Section 419 I.P.C. This in short is the contention raised.

3. I shall carefully avoid any unnecessary expression of opinion on merits about the acceptability of the allegations or

credibility of the data collected. Suffice it to say that I have gone through the F.I.R. in detail. I must alertly remind myself of the nature, quality and contours of jurisdiction of this Court under Section 482 Cr.P.C. The jurisdiction which is sought to be invoked is the extra ordinary inherent jurisdiction. Such jurisdiction is not to be invoked as a matter of course. It has to be invoked only in exceptional cases, that too only in aid of justice. The fact that an accused may be entitled to succeed later in his claim for discharge/acquittal will not ipso facto justify or persuade this court to invoke the jurisdiction under Section 482 Cr.P.C. It is too much to assume that the false/incorrect representation that the petitioner is an I.P.S. officer of Madras cadre was made in the instant case without any intention to deceive persons, to whom such representations were made and to get undeserved favours from them. I shall not state anything more about the allegations. It follows that the petitioner is not entitled to succeed in this Crl.M.C.

4. This Crl.M.C. is accordingly dismissed. I may hasten to observe that I have only intended to observe that powers under Section 482 Cr.P.C. cannot be invoked and it will be open to the petitioner to raise all his relevant and appropriate contentions before the learned Magistrate. The

petitioner can, needless to say, stake his claim for discharge at the stage of Section 239/240 Cr.P.C.

5. The learned counsel for the petitioner further submits that the petitioner is a person coming from Chennai and unnecessary insistence on personal presence on all dates of posting is likely to cause hardship and loss to the petitioner. I find no reason why the learned Magistrate should make such unnecessary insistence. Only if personal presence is required, need such presence be insisted. Otherwise he will be permitted to appear through counsel.

(R. BASANT)
Judge

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